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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 AMAZON.COM SERVICES LLC.,

10 Petitioner,

Case No. C22-1815-JCC

11 v.

ORDER

12 UNITED STATES DEPARTMENT OF
13 JUSTICE,

14 and

15 Respondent,

16 MARTIN J. WALSH, SECRETARY OF
17 THE UNITED STATES DEPARTMENT
18 OF LABOR,

19 Intervenor-Cross Petitioner.

20 This matter is before the Court on referral from the Honorable John C. Coughenour of:

21 (1) Petitioner Amazon.com Services LLC’s (“Amazon”) “Motion for Protective Order Pertaining
22 to Subpoenas Issued Under the Financial Institutions Reform Recovery and Enforcement Act
23 [("FIRREA")]” (dkt. # 7); (2) Secretary of the United States Department of Labor Martin J.
Walsh’s (“Secretary”) “Motion to Compel Compliance with OSHA Subpoenas” (dkt. # 15); and
 (3) Amazon’s “Opposition to Secretary’s Motion to Compel Compliance with OSHA Subpoenas

1 and Cross-Motion for Protective Order” (dkt. # 24). The Court heard oral argument from the
 2 parties on January 30, 2023.

3 In this case, the United States Department of Labor, Occupational Safety and Health
 4 Administration (“OSHA”) and the U.S. Attorney’s Office for the Southern District of New York
 5 (“SDNY”) (collectively, “the Government”) are investigating Amazon for workplace safety
 6 violations and potential false representations about injury numbers to obtain extensions of credit.
 7 In July and August 2022, OSHA opened investigations at six Amazon facilities, specifically at:
 8 (1) New Windsor, New York (“DYO1”); (2) Waukegan, Illinois (“MDW8”); (3) Deltona,
 9 Florida (“MCO2”); (4) Denver, Colorado (“DEN5”); (5) Albany, New York (“ALB1”); and (6)
 10 Nampa, Idaho (“BOI2”). (*See* Hennefeld Decl. (dkt. # 16) at ¶ 5.)

11 Pursuant to 29 U.S.C. § 658(c), the Secretary has six months from the occurrence of any
 12 violation to issue any citations and notifications of penalty for alleged violations of the
 13 Occupational Health and Safety Act (“OSH Act”). On January 17, 2023, OSHA issued three
 14 citations to Amazon for violations of § 5(a)(1) of the OSH Act at DYO1, MDW8, and MCO2 for
 15 failure to furnish a place of employment free from recognized hazards causing or likely to cause
 16 death or serious physical harm to employees. (*See* Supp. Hennefeld Decl. (dkt. # 32) at ¶ 7, Exs.
 17 F-H; *see also* OSHA, Release No. 23-63-NAT (2023)¹.) OSHA’s investigations at DEN5,
 18 ALB1, and BOI2 remain ongoing, and any further citations arising out of those inspections must
 19 issue by February 1, 2023. (*See* Hennefeld Decl. at ¶ 28.)

20 Relatedly, in coordination with OSHA, SDNY is investigating Amazon under FIRREA
 21 regarding whether it engaged in a scheme to hide worker injuries and made false representations
 22 to lenders about such injuries and its safety record to obtain credit. (*See* Hennefeld Decl. at ¶ 7.)
 23

¹ Available at: <https://www.osha.gov/news/newsreleases/national/01182023> (last accessed January 30, 2023).

1 SDNY has issued subpoenas for documents and witness testimony specific to its FIRREA
2 investigation, which incorporates by reference all documents requested by the OSHA Subpoenas.
3 (See *id.* at ¶¶ 7-9.)

4 In sum, the parties' dispute in this matter largely concerns the timing and scheduling of
5 Amazon's production regarding the Government-issued subpoenas. Amazon does not contest the
6 enforceability of the Government's subpoenas—or otherwise argue that it will not comply with
7 the subpoena requests—but instead seeks additional time to complete its review and production.
8 (See dkt. ## 7 at 1-3, 24 at 1-3.) The Government counters that given the nature of its
9 investigation, and the OSHA-issued citations issued thus far, Amazon should not be provided
10 much additional time to respond due to the serious worker safety issues at stake. (See dkt. ## 15
11 at 1-2, 31 at 1-2, 8.)

12 Here, based on the record before the Court, it is clear that Amazon has undertaken a
13 significant mobilization of its resources to respond to the Government's subpoena requests given
14 the extensive scope of OSHA's investigation into Amazon's safety practices and the massive
15 volume of requested documents. (See Bailey Decl. (dkt. # 25) at ¶¶ 3-6, 8, 11; Paul Decl. (dkt.
16 # 26) at ¶¶ 4, 6, 8-10, 13; Nichols Decl. (dkt. # 27) at ¶¶ 66-75, 84-86; Stewart Decl. (dkt. # 28)
17 at ¶¶ 2-5, 9-10.) Despite its efforts thus far, Amazon has credibly demonstrated it requires
18 additional time to complete its review and production to provide responses to the Government's
19 subpoena requests.

20 Accordingly, having considered the parties' submissions, oral argument, the balance of
21 the record, and the governing law, the Court hereby ORDERS that:

(1) The Secretary's Motion to Compel Compliance with OSHA Subpoenas (dkt.)

15) and Amazon’s Cross-Motion for a Protective Order (dkt. # 24) are GRANTED in part, and DENIED in part, as follows:

a. The Government’s deadline to issue citations with regard to its investigations into DEN5, ALB1, and BOI2 will be equitably tolled from February 1, 2023 to **April 18, 2023**. See e.g., *Costa v. Ben E. Keith Co.*, 2019 WL 13218924, at *2 (W.D. Tex. June 18, 2019) (noting that Court has discretion to equitably toll statute of limitations provided by 29 U.S.C. § 658(c) for OSHA-issued citations); *Acosta v. Quality Constr. Inc.*, 2018 WL 7514591, at *2 (D. Colo. Dec. 21, 2018), *report and recommendation adopted*, 2019 WL 1077430 (D. Colo. Jan. 24, 2019) (enforcing OSHA-issued subpoena and tolling statute of limitations on OSHA-issued citations until full compliance); see also *Acosta v. Xcel Commun. of S. Alabama, Inc.*, 2019 WL 1370869, at *6 (S.D. Ala. Mar. 26, 2019) (tolling statute of limitations until date respondent fully complied with administrative subpoena). Should Amazon’s production to the Government subpoena requests demonstrate additional bases for OSHA’s issued citations, “the Secretary may seek to amend the existing citations to include those matters or issue new citations.” *Walsh v. R & L Carriers Shared Servs.*, 2022 WL 3227666, at *5 (D.N.H. May 12, 2022) (collecting cases), *report and recommendation adopted*, 2022 WL 3595180 (Aug. 19, 2022).

b. Amazon shall complete its production and provide a complete privilege log for the ergonomic hazard assessments on or before **February 3, 2023**.

c. Amazon shall complete its review and production of all relevant electronically stored information (“ESI”), as well as produce complete privilege logs, for

1 the four initial custodians identified by the parties (Amazon's Global Medical Director,
2 Director of Work Health and Safety Initiatives and Audits, Director of Recordkeeping,
3 and Director of Global Work Health and Safety Ergonomics), and the fifth custodian
4 identified by the parties (Amazon's Senior Manager for North America Ergonomics), on
5 or before **March 1, 2023**. Amazon shall provide an initial privilege log for any withheld
6 responsive documents as to these custodians on or before **February 3, 2023**.

7 d. Amazon shall produce the four initial custodians, and the fifth custodian,
8 for joint depositions with OSHA and SDNY on mutually available dates on or before
9 **March 15, 2023**.

10 e. Amazon shall complete its review and production of all other responsive
11 ESI for the remaining custodians, as well as produce complete privilege logs for any
12 withheld responsive documents on the OSHA Subpoena requests, on or before **June 30,**
13 **2023**. Amazon shall produce responsive documents on a rolling basis.

14 f. Amazon shall produce all other pending custodians and witnesses for joint
15 depositions with OSHA and SDNY on mutually available dates on or before **June 30,**
16 **2023**.

17 g. Amazon shall provide privilege logs on a rolling basis for its subsequent
18 productions to the Government for any withheld responsive documents until it has fully
19 produced all responsive ESI and complete privilege logs on the OSHA Subpoena
20 requests.

21 (2) Amazon's Motion for a Protective Order re: FIRREA Subpoenas (dkt. # 7) is
22 GRANTED in part and DENIED in part. Amazon shall provide its responses to the
23 FIRREA-specific subpoena requests, and make any relevant witnesses available to SDNY for

1 deposition, by **July 31, 2023**, or otherwise within **thirty (30) days** of its provision of all
2 responsive ESI and complete privilege logs regarding the OSHA Subpoena requests.

3 (3) A status hearing is set in this matter for **Tuesday, April 18, 2023 at 8 a.m.** The
4 parties are directed to each submit status updates to the Court by **April 14, 2023**, regarding
5 Amazon's compliance with the Court's deadlines and this Order, including Amazon's rolling
6 production of items set forth in (1)(e).

7 (4) The Clerk is directed to send copies of this Order to the parties and to the
8 Honorable John C. Coughenour.

9 Dated this 30th day of January, 2023.

10 
11 MICHELLE L. PETERSON
12 United States Magistrate Judge